IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4226 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMCHANDRA P LALWANI & 28 - Petitioner(s)

Versus

STATE OF GUJ & 12 - Respondent(s)

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Appearance :

MR VS PARIKH for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 2 - 29.

GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

None for Respondent(s) : 3 - 4,6 - 13.

RULE SERVED for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/09/2005

ORAL JUDGMENT

1. This matter was notified on Board for Final Hearing on 22/9/2005. Mr.Deven Parikh, learned advocate appearing on behalf of the petitioners requested for time, as he wanted to go through the papers. In view of the fact that this matter is of 1988, time was not required to be granted. However, as a last chance and in the interest of justice, the matter was adjourned to 22/9/2005.

2. Today, the present petition is called out thrice, however, learned advocate appearing on behalf of the petitioners has chosen not to remain present before this court and in view of the fact that this matter is of 1988, this court has no other alternative but to decide and dispose of the present petition on merits ex-parte.

3. In this petition under Article 226 of the constitution of

India, the petitioners have challenged the legality and validity of the order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No.SRD-24 of 1987 dtd.8/1/1988 in partly allowing the said revision application and modifying the order passed by the Collector, Ahmedabad dtd.28/10/1986 and order passed by the Prant Officer, Viramgam Prant, Ahmedabad dtd.18/6/1984 in RTS Review Application No.36 of 1984 in so far as directing to mutate the names of the petitioners up to 31/7/1981 only and directing to make necessary entry in the revenue record that after 31/7/1981, the petitioners have no right, title or interest and further directing the Collector, Ahmedabad to initiate the proceedings under sec.84(C) of the Bombay Tenancy Act.

4. The dispute is with regard to the land bearing Block No.708, admeasuring 1 Acre and 1 Guntha of village Naz, Taluka Daskroi and the same was of the ownership of one Babubhai Bhulabhai and Bai Mani, widow of Fulabhai Sanabhai. The original land owners applied for temporary permission for using the land in question for Non-agricultural purpose for one year for preparing Bricks etc. and the said application was submitted before the Taluka Development Officer, Daskroi in the

month of January, 1981 and the Taluka Development Officer, Daskroi vide order dtd.31/1/1981 granted temporary NA Permission only for the period up to 31/7/1981. Though, the NA Permission as granted temporarily up to 31/8/1981, all the petitioners purchased the aforesaid land in question jointly by registered sale deed dtd.24/3/1981 as if NA Permission has been granted permanently and the said land can be used for Non-agricultural purposes permanently. Vide Mutation Entry No.2393, the names of the petitioners came to be mutated into the record of rights on the basis of the aforesaid sale deed in favour of the petitioners. The Prant Officer, Viramgam Prant, Ahmedabad was of the opinion that the aforesaid Entry No.2393 mutating the names of the petitioners in the record of rights, was illegal and he, therefore, issued show cause notice to the petitioners and the petitioners were directed to show cause as to why the said Entry should not be cancelled. The Prant Officer, Viramgam Prant, Ahmedabad cancelled the said entry by holding that though NA Permission was granted temporarily only up to 31/7/1981 and the petitioners are not agriculturists, the petitioners have purchased the land in question and tried to become agriculturist, which is not permissible under the Bombay Tenancy Act and that there is no NA Permission after 31/7/1981. Being aggrieved by and dissatisfied with the

order passed by the Prant Officer, Viramgam Prant, Ahmedabad dtd.18/6/1984 in cancelling / quashing and setting aside the Entry No.2393, the petitioner preferred Revision Application No.63 of 1984 before the Collector, Ahmedabad and the Collector, vide order dtd.28/10/1986, dismissed the s aid revision application, confirming the order passed by the Prant Officer, Viramgam Prant, Ahmedabad dtd.18/6/1984. Being aggrieved by and dissatisfied with the order passed by the Collector, Ahmedabad dtd.28/10/1986 in dismissing the Revision Application No. 63 of 1984 , the petitioners preferred Revision Application No.SRD-24 of 1987 and the Addl.Chief Secretary modified the aforesaid two orders, by directing to continue the names of the petitioners in the revenue record only up to 31/7/1981 and also directing the revenue authority to make an additional entry in the revenue record that the petitioners do not have any right, title or interest after 31/7/1981 and further directed the Collector to initiate the proceedings under sec.84(C) of the Bombay Tenancy Act. Being aggrieved by and dissatisfied with the order passed by the Addl.Chief Secretary (Appeals) , Revenue Department, State of Gujarat in Revision Application No.SRD-24 of 1987 dtd.8/1/1988, the petitioners have preferred the present petition under Article 226 of the Constitution of India.

5. It appears from the pleadings that the petitioners claim rights on the basis of the NA Permission granted vide order dtd.31/1/1981 and registered sale deeds dtd.24/3/1981. It is required to be noted that the land bearing Block No.708, situated at Village Naz was an agricultural land and the said land could not have been purchased by the petitioners, if the said land continued to be agricultural land. The original land owners got temporary NA Permission up to 31/7/1981 only and therefore, after 31/7/1981 again the s aid land was an agricultural land and after 31/7/1981, the petitioners could not have purchased the said land. Knowing fully well that the petitioners are not in a position to purchase the land in questions as they are not agriculturist, the petitioners and the land owners played a mischief and the petitioners purchased the aforesaid land in question by registered sale deed dtd.24/3/1981, during the period during which, there was temporary NA Permission. As the petitioner could not have purchased the agricultural land, the moment the aforesaid land in question becomes agricultural land i.e. after 31/7/1981, the petitioners could not have purchased the land in question and thus as rightly held by the Prant Officer, Viramgam Prant, Ahmedabad as well as the Collector, confirmed by the Addl.Chief

Secretary, that by the aforesaid device,the petitioners had tried to become agriculturists, which is not permissible under the provisions of the Bombay Tenancy Act. As such, it appears that the petitioners have committed a fraud by purchasing the aforesaid land in question, which they could not have purchased, if the land in question is continued to be agricultural land and therefore, by obtaining the temporary NA Permission, they have purchased the land immediately and they have tried to become agriculturists and therefore, the Addl.Chief Secretary is justified in continuing the name of the petitioners in the record of rights only up to 31/7/1981 till the NA Permission was in operation and the Secretary is also justified in directing the Collector to initiate proceedings under sec.84(C) of the Bombay Tenancy Act. The petitioners have not approached this Court with clean hands and have tried to become agriculturists by the aforesaid device and playing a mischief. No interference is called for at the hands of this Court in exercise of the powers under Article 226 of the Constitution of India. Under the circumstances, there is no substance in the present petition and the same is required to be dismissed and is accordingly dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated forthwith.

6. The Collector is hereby directed to comply with the directions issued by the Addl.Chief Secretary (Appeals), Revenue Department (State of Gujarat in Revision Application No.SRD-24 of 1987 vide order dtd.8/1/1988 with regard to initiation of the proceedings under sec.84(C) of the Bombay Tenancy Act and complete the proceedings as expeditiously as possible, as the proceedings are even otherwise delayed. Rule is discharged with costs which is quantified at Rs.5000=00 (Rupees Five Thousand only).

(M.R. SHAH,J.)

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